IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 660 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ANKUSH GANPATRAO MAHARASHTRI & 2 - Appellant(s)
Versus
MINOR RAJENDRASINGH M VAGHELA THROUGH MEHRUBHA K VAGHELA - Defendant(s)

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Appearance :

MR KEDAR BINIWALE for MR RAJNI H MEHTA for Appellant(s) : 1 - 3.
MR NV SOLANKI for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 12/12/2006

ORAL JUDGMENT

1. The original opponents of MAC Case No. 268 of 1987 have filed this appeal under Section 110-D of the Motor Vehicles Act, 1939 [hereinafter referred to as the

“Act”]. In this appeal they have challenged the judgment and award made by MACT [No.3 Main] Ahmedabad dated 29th December, 1989. By the said award the Tribunal has directed the appellants to pay jointly and severally the amount of Rs.44,250=00 by way of compensation to the respondent together with interest at the rate of 12% per annum from the date of the petition till realization and the proportionate costs.

2. The accident in question took place on 24th April, 1987. The respondent, who is the father of Rajendrasingh, the victim of the accident, filed the petition for obtaining compensation of Rs.50,000=00 for the injuries suffered by Rajendrasingh in a vehicular accident involving auto-rickshaw bearing registration No. GRS 3408. According to him on the date of the incident around 8:15 p.m., Rajendrasingh was proceeding towards CTM cross roads from Hatkeshwar circle in the company of his uncle Bhupatsinh Khumansinh. They were walking on the side of the road. At that time, the offending vehicle, which was driven by appellant no. 1, knocked him down. It is the say of the respondent that the vehicle was driven in a rash and negligent manner. As a result of the same, Rajendrasingh sustained serious injuries on his legs. He was removed to the hospital on the very day and he was

kept as indoor patient till 6th June, 1987. During treatment it was found that he had sustained comminuted fracture of tibia and fibula. There were several other serious injuries also. Even after his discharge from the hospital he was required to take follow up treatment. In view of the same, the respondent preferred petition under the provisions of the Act for claiming compensation of Rs.50,000=00.

3. At the trial, the parties led evidence, oral as well as documentary. On the basis of the same, the Claims Tribunal concluded that the offending vehicle was involved in he accident. It is also found that the vehicle was driven in a rash and negligent manner by appellant no. 1. The Tribunal also held that the vehicle was owned by appellant no. 2 and it was insured with appellant no. 3. Hence they were jointly and severally liable to pay compensation to the victim. The Tribunal assessed the compensation at Rs.44,250=00. Hence, it passed the aforesaid award.

4. In this appeal, I have heard Mr. Kedar Biniwale learned advocate appearing for Mr. R.H. Mehta learned advocate for the appellants and Mr. N.V. Solanki learned advocate for the respondent. It is submitted by Mr.

Biniwale that the involvement of rickshaw bearing registration no. GRS 3408 itself is in doubt. According to him, there is no satisfactory evidence to show that it was this vehicle which had caused the accident. To substantiate his submission Mr. Biniwale has drawn my attention to the fact that no information was given to the Police about the accident and a complaint was filed directly in the Court at a belated stage i.e., about 14 to 15 days after the accident. Mr. Biniwale has further tried to strengthen his submission by submitting that the respondent as well as the owner of the offending vehicle are neighbours and, therefore, appellant no. 2 has shown his willingness to substitute himself in place of real culprit. He has also made a faint attempt to challenge the quantum of compensation. As against that Mr. Solanki has supported the judgment of the Tribunal.

5. I have carefully gone through the paper book supplied by the appellants and in particular, the oral evidence. The evidence of Bhupatsinh Khumansinh, the uncle of the victim, which is recorded in Criminal case No. 1721 of 1987 is also placed on record at Exh. 6, wherein he has stated that on the relevant day, he was proceeding towards Bombay Housing with Rajendrasingh. Rajendrasingh was aged about 14-15 years at that time.

When they reached near Devikrupa Society, the offending vehicle came from behind and knocked down Rajendrasingh and ran over his right leg. As a result of the same, fracture was caused as also other serious injuries. He has further stated that the driver of the rickshaw had halted the rickshaw for sometime and he could note down his number as GRS 3408. The injured was thereafter taken to the hospital in the rickshaw. In the cross-examination, several suggestions have been made to him but they have been denied. He has by and large stuck to the version given in the examination-in-chief. He has categorically stated that this very vehicle was involved in the accident. So far as Bhupatsinh Khumansinh's evidence in the present proceedings is concerned, it is at Exh. 26. It is stated by him that on the relevant date, the victim was knocked down by rickshaw bearing registration No. GRS 3408 from behind. As a result of the same, the victim had sustained injures. He has also stated that because the Police had not taken his complaint on the ground that he had approached late, he had lodged complaint in the Court. In the cross-examination, suggestions have been made to him that he had lodged false complaint against the driver, but the same has been denied. Thus, it can be seen that so far as the identity of the vehicle is concerned there is no

doubt in the mind of Bhupatsinh Khumansinh, who is eye witness to the accident and who has remained present with the victim all throughout. He has also described the manner in which the accident had taken place. Merely because the complaint has been filed at a belated stage, it cannot be said that the vehicle was not involved. May be that in the criminal case, appellant no. 1 has been acquitted, but that would hardly have any adverse reflection on this proceeding. In the present case, the evidence with regard to identity of the vehicle is reliable and cogent and it cannot be doubted. Hence, I see no reason to accept the submission of Mr. Biniwale on that count.

6. So far as the quantum is concerned, I have carefully perused the discussion made by the Tribunal in its judgment and particularly in paragraph 10 and 11 of the judgment. For pain, shock and suffering the Tribunal has awarded a sum of Rs.15,000=00. The medical evidence shows that the victim had suffered as many as seven injuries and all of them were serious injuries. He had sustained fracture of tibia and fibula. There was profuse bleeding and the bones were exposed. There was shortening of right leg by one inch. Doctor's evidence is at Exh. 29. Dr. Sachin Sharad Raval has given the evidence in

detail with regard to the nature of the injuries sustained by the victim as well as the treatment given to him and also the disability suffered by him. In his opinion, the disability was of 30%, so far as the lower limb was concerned, and in terms of entire body it was to the extent of 15%. The loss of earning capacity was assessed at Rs.36,000=00, taking the future economic loss at Rs.150=00 per month. Considering the age of 14 years, the Tribunal has applied multiplier of 20. May be that it is slightly on higher side, but there is no need to disturb it. For pain, shock and suffering, sum of Rs.15,000=00 has been awarded by the Tribunal. For medical treatment, Rs.3,750=00 has been awarded and for special diet etc., Rs.1,000=00 and Rs.500=00 for transportation. Thus, total amount of Rs.44,250=00 has been awarded by the Tribunal. This is just compensation and there is no question of interfering with it in this appeal. Hence, this appeal has no merits and it is dismissed with costs.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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